UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

DEC 11 2008

OFFICE OF
PREVENTION, PESTICIDES AND
TOXIC SUBSTANCES

Elizabeth Megginson
Chief Counsel
Maritime Administration
U.S. Department of Transportation
400 Seventh Street, S.W.
Washington, D.C. 20590

Dear Ms. Megginson:

I am writing in response to your letter of July 25, 2008, to Brenda Mallory, Associate General Counsel, regarding the regulatory status of certain cables containing Polychlorinated Biphenyls (PCBs) that are present on two tug boats the Maritime Administration (MARAD) is interested in donating to Seattle Maritime. The Office of General Counsel has asked me to respond to your inquiry.

In your July 25, 2008, letter you seek further clarification of an earlier May 29, 2008, letter from Ms. Mallory regarding two particular types of cables found on these tugs, specifically, cables where the non-liquid PCB-containing component of the cable is covered by an additional outer sheath or covering of rubber or braided metal that does not contain any PCBs. You wish to know whether the Environmental Protection Agency (EPA) considers the inner non-liquid PCB component of these sheathed cables to be "totally enclosed."

EPA's May 29, 2008, letter summarized the regulatory status of this cable. EPA's regulations at 40 CFR §761.20 and §761.30(m) only pertain to oil-filled cable, including cable constructed of lead-sheathed pipe containing oil-soaked kraft paper insulation. Because cable containing non-liquid PCB components is not authorized by those regulations, and since EPA has not determined it to be "totally enclosed" under TSCA §6(e)(2)(C), such cable can only be distributed in commerce for purposes of disposal per §761.20(c)(2). The location of the non-liquid PCB component in the cable construction does not affect its regulatory status. EPA has long been aware that braided armor cable and rubber-sheathed cable was commonly used in older Navy vessels, and does not believe its use on these tugs to be a novel situation requiring reexamination of its existing interpretation.

If you have any additional questions about this matter, please contact me at (202) 566-0718 or Peter Gimlin at (202) 566-0515.

Sincerely,

Maria J. Doa, Ph.D.,
Director
National Program Chemicals Division

cc: Brenda Mallory, OGC
Andrea Medici, OGC
Frank McAlister, OSW

U.S. Department
of Transportation
**Maritime
Administration**

400 Seventh Street, S.W.
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Brenda Mallory
Associate General Counsel
2333A
Pesticides and Toxic Substances Law Office
Office of General Counsel, EPA
1200 Pennsylvania Ave. N.W.
Washington, D.C. 20460

July 25, 2008

In re: Seattle Maritime – Tugs – Armored Cabling – "Totally Enclosed"

Dear Ms. Mallory:

Thank you for your letter of May 29, 2008 relating to our question concerning what constituted "totally enclosed" with respect to our proposed donation of two tugs to Seattle Maritime for training purposes. We write you to clarify a point in your letter.

Your letter indicates that you did not understand what we meant by "armored cabling" containing non-liquid PCBs. It appears to us that your answer may have been based on the assumption that the PCBs in question were located in the armored portion of the cabling.

Much of the cable at issue has an outer coating of braided metal sheathing that totally surrounds separate non-liquid material underneath. None of this outer sheathing contains PCBs; only the non-liquid material under this outer sheathing contains PCBs.

There is some other cable in the vessels. This cabling is completely surrounded by rubberized insulating material. If this insulating material contains PCBs in prohibited amounts, we understand that the EPA's position is that the PCBs are not totally enclosed. However, if the rubberized insulating material does not contain PCBs, the situation would be similar to that above, e.g., braided metal sheathing.

In these two cases, if the armored or rubberized sheathing did not contain PCBs, would the separate inner PCB containing material be considered "totally enclosed"?

We do not ask this as an academic question. Resolution of this question will assist us in our approach to testing cable in the future and more generally in how we process future sales or donation of vessels for further use. Besides the donation of these two tugs to Seattle Maritime, the Maritime Administration continues to get inquiries from entities seeking to purchase vessels for further operating use.

Because of time constraints with regard to the donation of these two tugs to SMA, we request that EPA provide a response as soon as reasonably practicable.

Sincerely,

Elizabeth Megginson
Chief Counsel
Maritime Administration

cc: Maria Doa
Andrea Medici
Frank McAllister

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAY 29 2008

OFFICE OF
GENERAL COUNSEL

Elizabeth Megginson,
Chief Counsel
Maritime Administration, DOT
400 Seventh Street SW
Washington, DC 20590

Dear Ms. Megginson:

Thank you for your January 25, 2008, letter in which you asked for EPA's confirmation that remediation of "armored cabling" containing non-liquid PCBs on two tugboats is not necessary in order to comply with the provisions of the Toxic Substances Control Act (TSCA). We understand that the Maritime Administration (MARAD) is considering donating two tugboats to the Seattle Maritime Academy and the Academy is trying to assess its potential regulatory obligations under TSCA. For the reasons discussed below, we can not provide the requested confirmation.

MARAD's position is that the "armored cable" containing non-liquid PCBs is "totally enclosed," and that the use of such cable is authorized, for purposes of TSCA and EPA's PCB regulations at 40 C.F.R. Part 761. Your letter does not define "armored," but seems to refer to a plastic or similar material that contains non-liquid PCBs and that surrounds metal wires or cables. This response is based on the above understanding of the materials in question.

EPA has previously addressed the regulatory status of such cable housing in a letter dated May 29, 1992, from Tony Baney to M. P. Argenzio-West of the Office of General Counsel, Department of the Navy (enclosed). That letter explains that the regulation on which your position is principally based, 40 C.F.R. § 761.20, does not refer to cable that has non-liquid PCBs in its covering, but rather to intact, non-leaking oil-filled electrical cable. The distribution of this equipment in commerce was found to be "totally enclosed" in conjunction with other oil-filled electrical equipment containing liquid PCBs. The letter provides further that cable that is covered with plastic or other material containing non-liquid PCBs is not "totally enclosed" and is not authorized for use. Such cable can only be distributed in commerce for purposes of disposal. 40 C.F.R. § 761.20(c)(2). The use authorization for cable at 40 C.F.R. § 761.30(m) similarly covers only intact, non-leaking oil-filled electrical cable.

Since the 1992 letter, EPA has consistently implemented TSCA and the regulations on this basis. In 1994, EPA expressly stated that use of non-liquid materials containing PCBs, including "insulating materials used in electrical cabling," was not authorized. 59 FR 62788, 62809-10 (December 6, 1994). Although EPA *proposed* to authorize use and distribution in commerce of such materials under certain conditions, for various reasons, the regulation was never finalized. Therefore, the regulatory status of these materials remains unchanged. Use of PCBs in any manner other than a totally enclosed manner is prohibited by TSCA § 6(e)(2)(A), unless EPA has authorized that use by a regulation.

In summary, we cannot agree with your conclusion that donation of tugboats that contain non-liquid PCBs at concentrations of 50 ppm or greater would not violate TSCA. If you have any further questions, please feel free to contact me or Andrea Medici of my staff at 202-564-5634.

Sincerely,

Brenda Mallory
Associate General Counsel
Pesticides and Toxics Substances Law Office
Office of General Counsel

Enclosure

Maria Doa, EPA, Office of Pollution Prevention and Toxics
Frank McAllister, EPA, Office of Solid Waste
Andrea Medici, EPA, Pesticides and Toxic Substances Law Office

U.S. Department
of Transportation
**Maritime
Administration**

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Brenda Mallory
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1200 Pennsylvania Ave. N.W.
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January 25, 2008

In re: Seattle Maritime – Tugs – Armored Cabling – "Totally Enclosed"

Dear Ms. Mallory:

The Maritime Administration owns two tugs, the TD69 and TD610. These tugs were constructed in 1961 and 1974 and were used to support the Maritime Administration's National Defense Reserve Fleet operations in Benicia, California. The two tugs are no longer needed for the Maritime Administration's operations and we recently received a request from the Seattle Maritime Academy (SMA) to donate these two tugs to SMA.

SMA is a workboat maritime training academy. It is part of the Seattle Central Community College and accredited by the Northwest Association of schools and colleges. One of the statutory missions of the Maritime Administration is to support the merchant marine and state academies that provide training resources to the maritime industry. 46 U.S.C. §51103. The SMA intends to operate these two tugs to provide training in navigation. This training will enable SMA students to qualify for their ratings approvals from the United States Coast Guard. The Maritime Administration wishes to give these two tugs to the SMA.

The Maritime Administration is performing tests on these tugs for polychlorinated biphenyls (PCBs). All of these tests are not yet completed. However, results have been received that affect the ability and willingness of SMA to continue to seek a donation of both tugs.

There was one instance of PCBs in excess of 50 ppm found in the armored cabling of the TD610. Six instances of PCBs in excess of 50 ppm were found in the armored cabling of the TD69. SMA indicates that it has only limited funds and, if remediation of the PCB cabling is required, it only has enough money to remediate the one site on the TD610.

Before the SMA abandons its efforts to obtain the donation of the TD69, we wanted to contact the Environmental Protection Agency (EPA) to determine whether such remediation is even necessary where the vessel is being donated for continued use. It

appears to the Maritime Administration, for the reasons stated herein, that remediation of the armored cabling PCBs is not necessary to comply with the provisions of the Toxic Substances Control Act ("TSCA") in order to transfer the two tugs. We seek your confirmation of this analysis.

To the best of our knowledge, none of this armored cabling contains liquid PCBs. Besides being armored, the cabling is primarily contained in the bulkheads of the vessels. We are unaware of any exposure of PCBs to human beings or the environment as a result of this armored cabling.

TSCA provides that "no person may manufacture, process, or distribute in commerce or use any polychlorinated biphenyl in any manner other than in a totally enclosed manner." 15 U.S.C. §2605(e)(2)(A). TSCA defines "totally enclosed manner" as a "manner which will ensure that any exposure of human beings or the environment to a polychlorinated biphenyl will be insignificant as determined by the Administrator [of the Environmental Protection Agency (EPA)] by rule." 15 U.S.C. §2605(e)(2)(C). [1/]

The EPA Administrator has promulgated regulations implementing the authority contained in 15 U.S.C. §2605(e)(2). "Totally enclosed manner" is defined as "any manner that will ensure no exposure of human beings or the environment to any concentration of PCBs." 40 C.F.R. §761.3.

The foregoing definition is paralleled in the Administrator's findings in 40 C.F.R. §761.20. "For purposes of determining which PCB items are totally enclosed, pursuant to section 6(e)(2)(C) of TSCA [15 U.S.C. §(e)(2)(C)], since exposure to such items may be significant, the Administrator further finds that totally enclosed manner is a manner which results in no exposure to humans or the environment to PCBs." 40 C.F.R. §761.20. See also 49 FR 44643-01, 1984 WL 1331136 (November 8, 1984). (redefining "totally enclosed")

40 C.F.R. §761.20 defines what activities are "totally enclosed."

> The following activities are considered totally enclosed: distribution in commerce of intact, nonleaking electrical equipment such as transformers (including transformers used in railway locomotives and self-propelled cars), capacitors, electromagnets, voltage regulators, switches (including sectionalizers and motor starters), circuit breakers, reclosers, and **cable that contain PCBs at any concentration** and processing and distribution in commerce of PCB Equipment

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[1] / TSCA also provides that the prohibition on distributing PCBs in commerce also does not apply to PCBs "sold for purposes other than resale before two and one half years after October 11, 1976." 15 U.S.C. §2605(e)(2)(C). 40 C.F.R. §761.20(c)(1) narrows that statutory exemption by providing that "PCBs at concentrations of 50 ppm or greater, or PCB Items with PCB concentrations of 50 ppm or greater, sold before July 1, 1979 for purposes other than resale may be distributed in commerce in a totally enclosed manner after that date" without any further exemption.

containing an intact, nonleaking PCB Capacitor." (emphasis added) 40 C.F.R. §761.20 (first paragraph). [2]/

The transfer of these two tugs to SMA would therefore not seem to violate TSCA by virtue of this cabling. [3]/ We note in this connection that the Maritime Administration has operated these two tugs for years without any question being raised concerning hazards to the Maritime Administration's personnel with respect to exposure from PCBs aboard these vessels.

The Environmental Protection Agency's "PCB Q & A Manual" (1994 Edition) (hereinafter the "Manual") seems to the Maritime Administration to confirm its reading that the transfer of these tugs would not be a violation of TSCA because of the PCBs in the armored cabling. The Manual contains a chapter that is specifically concerned with "DISTRIBUTION IN COMMERCE (Sale of Circuit Breakers, Reclosers, and Cable)" Chapter VI.

The Manual states that:

> "The distribution in commerce (sale) of circuit breakers, reclosers, and cable which already contain PCBs in concentrations of 50 ppm or greater for purposes of reuse is allowed provided:
>
> - the unit was originally sold for use before July 1, 1979
> - the unit is intact and nonleaking at the time of sale; and
> - no PCBs are introduced into the unit." Manual at VI-2.

All three criteria exist in this instance. These tugs were constructed with this cabling before July 1, 1979. None of this armored cabling is leaking and no new PCBs are being introduced into these tugs.

The first question and answer in Part VI directly follow the quoted portion above and state as follows:

"Q1. Does this mean I can sell a PCB or PCB-contaminated circuit breaker, recloser, or cable?"

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[2] / Even where cabling is not totally enclosed, the regulations allow such cabling to continue to be used. 46 C.F.R. §761.30 provides a list of non-totally enclosed PCB activities authorized pursuant to 6(e)(2)(B) of TSCA [15 U.S.C. §2605(e)(2)(B)]. "PCBs at any concentration may be used in circuit breakers, reclosers, and cable and may be used for purposes of servicing this electrical equipment (including rebuilding) for the remainder of their useful lives" subject to the serving conditions contained in 40 C.F.R. §761.30(h)(2). See 40 C.F.R. §761.30(m).

[3] / In Environmental Transportation Systems Incorporated v. Ensco, Incorporated, 969 F.2d 503 (7th Cir. 1992), 40 C.F.R. §761.20 was relied upon by the Court to determine that the transport of nonleaking, intact, liquid PCBs in transformers was legal. 46 C.F.R. §761.20 allows "the distribution in commerce of intact nonleaking electrical transformers as a totally enclosed activity." Id at 510.

"A1: Yes. If the equipment was originally sold for use before July 1, 1979, and is now being sold for reuse (i.e., continued use). Also, the unit must be intact and nonleaking. EPA recommends that the buyer be advised that he is purchasing a PCB or PCB-contaminated unit." Manual at VI-2. [4]/

For these reasons, we seek your confirmation that the donation of these two tugs to SMA is not a violation of TSCA by reason of the existence of intact nonleaking PCB contaminated armored cabling aboard the vessels.

Sincerely,

Elizabeth Megginson
Chief Counsel
Maritime Administration

cc: Maria Doa
Andrea Medici
Frank McAllister

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[4] / The Manual also recognizes that "PCB and PCB-contaminated circuit breakers, reclosers, and cable may be used for the remainder of their useful lives. No recorded maintenance inspections are required for PCB or PCB-contaminated circuit breakers, reclosers, or cable." Manual at VI-4.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Cable policy

(5/29/92)

MAY 29 1992

T. SIMONStgs/OPPT-EED-CRB/5-29-92/TS-798/260-3991/Rm.NE118/Disk#8:B:CABLNAVY.RGX
FILES:EED/CRB CHRON READING/SUBJECT: Cable / Authorizations / Disposal / Permitting

M. P. Argenzio-West
Department of the Navy
Office of General Counsel
Puget Sound Naval Shipyard
Bremerton, WA 98314-5000

Dear Ms. Argenzio-West:

This is in response to your letter of April 10, 1992 to Jackson L. Fox with EPA Region X's Regional Counsel requesting guidance on the disposal of cable containing PCBs by Puget Sound Naval Shipyard. The letter was referred to me for a response. Your inquiry concerns the disposition of the large amounts of PCB contaminated cable jackets (average concentration 43 ppm with peaks above 500 ppm PCBs) generated during the deactivation and recycling of Naval ships.

The contractor's proposal, as you describe it, would be to strip the plastic jackets, sell the metal cable on the scrap market, and then barrel and bury, in a licensed landfill, only the jacketed material. Your request for interpretation focusses on whether the sale, distribution in commerce, and processing for disposal of the cable are activities allowed under the provisions of 40 CFR Part 761.

The PCB Regulations refer to PCB-Contaminated cable at 40 CFR 761.20 and 761.30(m). Both references were added to the PCB rules in 1982. (See the "Electrical Equipment Use" rule (August 25, 1982 -- 47 FR 37342). As the preamble to that rule indicates, the use authorizations granted by the 1982 rule were intended to extend only to oil-filled electrical cable. (See 47 FR at 37352.) The plastic coated cable referenced in your letter is neither "totally enclosed" nor specifically authorized for use in the PCB regulations. Therefore, the cable may be distributed in commerce only for purposes of disposal and not future use. In addition, the stripping of the cable as part of the disposal process is an activity that will require a Toxic Substances Control Act (TSCA) disposal permit. You may contact Bill Hedgebeth (206-553-7369) or Kris Colt (206-553-8577) in Region X (if that is where the stripping operation will be located) for further details on how to receive such a permit.

CONCURRENCES							
SYMBOL	TS-798	[illegible]	LE-132P	[illegible]			
SURNAME	Simons	[illegible]	[illegible]	[illegible]			
DATE	5/29/92	5/27/92	5/29/92	5/29/92			

EPA Form 1320-1 (12-70) OFFICIAL FILE COPY

There are a number of regulatory issues the Navy and/or the contractor the Navy hires (depending on when or whether the Navy sells the cable to the contractor) should be aware of in association with the disposal of PCB contaminated cable jackets greater than 50 ppm. These include but are not limited to:

o the Navy notifying as a generator with onsite storage if the waste was stored more than 30 days;

o the Navy manifesting the waste cable to the contractor or at least through the contractor prior to its ultimate disposal in a TSCA approved disposal facility;

o the contractor notifying as a generator with onsite storage if the stripped jackets are stored more than 30 days;

o the Navy ensuring it receives a Certificate of Disposal from either the contractor or the ultimate TSCA disposal facility once the waste is disposed of;

o the contractor seeking commercial storage approval (if storing at any one time more than 70 cubic feet of cable jackets contaminated with PCBs greater than 50 ppm) and notifying the EPA as a commercial storer (regardless of volume stored) before it may conduct the cable stripping operation;

o the contractor will have to manifest the stripped cable jackets to the ultimate approved TSCA disposal facility;

o the disposal facility has to have a TSCA permit and have notified the EPA of its waste handling activities;

o all storage of the coated cable and the jackets once they are stripped from the cable, must be in a facility that complies with 40 CFR 761.65(b);

o the Navy, the contractor, and the ultimate disposal facility, must keep records pursuant to 40 CFR 761.180; and,

o all the stripped cable jackets that are greater than 50 ppm PCBs must be stored and transported in compliance with Department of Transportation approved containers (see 40 CFR 761.65(c)(6) for the specific container type for non-liquid PCB waste).

If you have any further questions or comments, you may contact Tom Simons of my staff at 202-260-3991.

Sincerely,

Tony Baney, Chief
Chemical Regulation Branch

cc: Margaret B. Silver, Region X (SO-155)
Bill Hedgebeth, Region X (SO-155)